

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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GENERAL ELECTRIC COMPANY, a Corporation,  
Appellant,

vs.

C. A. BROWER, as Trustee of the Estate of AN-  
DRUS-CUSHING LIGHTING FIXTURE  
COMPANY, a Corporation, Bankrupt,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court  
for the Western District of Washington,  
Southern Division.

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Filed

AUG 11 1914

F. D. Monckton,  
Clerk.

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**Circuit Court of Appeals**  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Affidavit of Service of Citation on Appeal.....	51
Affidavit of Service of Citation on Appeal (Original).....	55
Amended Stipulation for Record Under Rule 77.....	28
Assignments of Error.....	24
Attorneys, Names and Addresses of.....	1
Bond on Appeal.....	22
Certificate of Clerk U. S. District Court to Transcript of Record.....	52
Certificate of Referee on Petition for Review..	15
Citation on Appeal (Copy).....	49
Citation on Appeal (Original).....	53
Names and Addresses of Attorneys.....	1
Objection to the Confirmation of the Sale of the Banner Electric Stock.....	4
Order Confirming Referee's Decision.....	21
Order Granting Appeal and Fixing the Amount of Bond on Appeal.....	27
Order of Referee Confirming Sale.....	11
Petition .....	3
Petition for Appeal.....	21
Petition for Review of Referee's Order.....	13
Stipulation for Transcript.....	2



**Names and Addresses of Attorneys.**

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Washington;

Attorneys for Appellee. [1\*]

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*In the District Court of the United States for the  
Western District of Washington, Holding  
Terms at Tacoma.*

No. —

IN RE ANDRUS-CUSHING LIGHTING FIX-  
TURE CO., a Corporation,

Bankrupt.

GENERAL ELECTRIC COMPANY, a Corporation,  
Claimant and Appellant,

vs.

C. A. BROWER, Trustee of the Estate of ANDRUS-  
CUSHING LIGHTING FIXTURE COM-  
PANY, a Corporation, Bankrupt,

Respondent and Appellee.

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\*Page-number appearing at foot of page of original certified Record.

**Stipulation for Transcript.**

IT HEREBY IS STIPULATED AND AGREED by and between counsel herein that the record on appeal in this matter shall constitute the following papers and none other, and that the Clerk, in preparing the record, shall omit all captions, endorsements, acceptances of service, verifications, etc., excepting file-marks:

1. Appellant's petition to reclaim.
2. Objections to confirmation of Trustee's sale.
3. Referee's order denying appellant's petition to reclaim, overruling appellant's objection to Trustee's sale and confirming sale.
4. Appellant's petition for review of Referee's order denying appellant's petition to reclaim, overruling appellant's objection to Trustee's sale and confirming sale.
5. Referee's certificate on review. [2]
6. Order Confirming Referee's decision.
7. Appellant's petition for appeal.
8. Bond on appeal.
9. Appellant's assignments of error.
10. Order allowing petition for appeal and approving bond.
11. Citation on Appeal.
12. Amended certificate under Rule 77.
13. This stipulation for record on appeal.



Dated at Tacoma this 14th day of July, 1914.

FRANK H. KELLEY,  
RALPH WOODS,

Attorneys for Petitioner.

WALTER M. HARVEY,

Attorney for Trustee in Bankruptcy.

[Endorsed]: "Filed in the U. S. District Court, Western District of Washington, Southern Division. Jul. 14, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [3]

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**Petition.**

(That Lamp Stock be Withheld from Sale, etc.)

Comes now the Banner Electric Works of the General Electric Company, a corporation, by Ralph Woods, its attorney, and respectfully shows to the Court:

I.

That at the time of the filing of the petition in bankruptcy in the above-entitled proceedings, your petitioner was the owner of lamp stock of the value of six hundred and nineteen and  $\frac{73}{100}$  (\$619.73) dollars, which said lamp stock is in the possession of the trustee in bankruptcy and which stock has at all times been kept separate and segregated from the stock of the said bankrupt.

II.

For a complete list of the stock of your petitioner, reference is hereby made to the first report of the Trustee, on page seven.

WHEREFORE, your petitioner prays that said

lamp stock be withheld from sale and upon a hearing the same be forthwith delivered to your petitioner.

BANNER ELECTRIC WORKS,

By RALPH WOODS,

Its Attorney.

[Endorsed]: "Filed this 8 day of October, 1913, at 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy." [4]

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**Objection to the Confirmation of the Sale of the  
Banner Electric Stock.**

Comes now the Banner Electric Works of the General Electric Company, by Ralph Woods, and Frank H. Kelley, its attorneys, and objects to the confirmation of the sale of what is known as the Banner Electric Stock, and shows to the Court as follows:

I.

That your petitioner has filed herewith claim for what is known as the Banner Electric Stock; that notice was given to purchaser at the time of the sale, that no action was taken by the Court at said time.

II.

That no appraisalment was made of said goods and the property was sold without proper notice; that at the time of said sale the Referee states that the same would be sold subject to confirmation.

III.

Your petitioner further shows that said goods

belonging to your petitioner were held by the bankrupt merely as agent for your petitioner; that what is known as the Banner Electric stock was at all times segregated and kept separate from the main stock of the said bankrupt.

IV.

That your petitioner at all times while said stock was in the store of the said bankrupt was insured against fire and against burglars and said insurance was paid by your petitioner.

V.

That the taxes on the same were paid by your petitioner. [5]

VI.

That the first report of the Trustee shows that the stock of your petitioner was kept separate and segregated from the main stock, and your petitioner hereby refers to the first report of the Trustee for correct list of said stock.

VII.

That the following is a copy of the contract entered into by your petitioner and the said bankrupt, to wit:

“APPOINTMENT OF AGENT.

“INCANDESCENT LAMPS.

“The General Electric Company, a New York corporation, (hereinafter called the ‘Manufacturer’), hereby through the General Manager of its Banner Electric Works, at Youngstown, Ohio, appoints Andrus-Cushing Lighting Fixture Company (hereinafter called the ‘Agent’), *and* Agent to sell for its Banner incandescent lamps, manu-

factured under United States Letter Patent, of the types and classes hereinafter specified upon the terms and subject to the conditions herein set forth and said Agent hereby accepts the appointment, and agrees to comply with said terms and to perform all conditions hereof.

“1. The Agency hereby created shall continue for the period of one year from July 1, 1912, unless sooner terminated as herein provided.

“2. The manufacturer agrees to maintain in the custody of the Agent, to be disposed of as herein provided, a stock of its Banner Gem (metalized filament), Mazda (Tungston) and Tantalum patented incandescent lamps; all of the lamps in such consigned stock shall be and remain in the property of the Manufacturer until the lamps are sold, and the proceeds of all lamps [6] sold shall be held for the benefit and for the account of the Manufacturer until fully accounted for as hereinafter provided. The quantity of lamps and the length of time they shall remain in stock is to be at all times determined by the Manufacturer; but its intent is to maintain the stock on an average basis of from 30 to 60 days' supply, as estimated by the Agent. All lamps shipped hereunder by or on behalf of the Manufacturer either to the Agent or upon his request during the continuance of this Agency, shall be subject to the same terms, conditions and agreements as if shipped to said stock, whether or not so specified. The Agent shall return to the Manufacturer, at any time when directed by it, all or any part of the said lamps

that have not been sold, and any duly authorized representative of the Manufacturer shall have access at all times during business hours to the place or places in which said lamps are stored.

“3. The agent is hereby authorized (a) to sell to anyone, lamps from said stock in broken package quantities at broken package prices, and in standard package quantities at standard package prices, and (b) to sell lamps from said stock to any purchaser under standard forms of contract made by the Manufacturer and under which the Agent may be given, by the Manufacturer written authority to deliver lamps at the prices fixed in said contracts, and (c) to sell, at prices on the same basis as those in standard forms of contract, lamps from said stock to any purchaser, not under contract, for the purchaser’s immediate use; but sales under this subdivision (c) may be made only on written permission from the Manufacturer first obtained in each instance. All sales shall be made only at such prices and upon such terms as may be established by the Manufacturer; the present prices and terms being contained in the schedules [7] presented herewith, which are subject to change on written notice from the Manufacturer from time to time.

“Upon all bills and invoices for lamps sold by the Agent shall appear the words: ‘Agent for Banner Incandescent Lamps of General Electric Company.’ The Agent has no authority to sell or transfer or in any way dispose of such lamps, except as herein expressly provided, and shall not control, or attempt to control, the prices at which any purchaser

shall sell any of such lamps. The due payment to the Manufacturer for all sales made hereunder by the Agent shall be and hereby is Guaranteed by said Agent.

“The Agent shall conform to the educational and engineering instructions of the Manufacturer, and shall advise with and instruct prospective purchasers as to the classes and types of lamps best suited to their several requirements in order to secure a maximum illumination for a minimum expenditure and shall conduct the business hereunder to the satisfaction of the Manufacturer.

“4. All of the Agent’s books and records relating to his transactions in connection with the sale and distribution of the Manufacturer’s lamps shall at all times during business hours be open to the inspection of any duly authorized representative of the Manufacturer.

“5. The Agent shall pay all expenses in the storage, cartage, transportation, handling and sale of lamps hereunder, and all expense incident thereto and to the accounting and collection of accounts thus created. The Agent shall be allowed as compensation for the performance of all obligations hereunder, the difference between the amount received from the sale of the lamps and their value on the basis of a discount of — per cent [8] from list prices as at the time fixed by the Manufacturer. The Manufacturer agrees that if the Agent sells during the period of this appointment, a quantity of lamps the value of which would entitle him to a higher basis of compensation, as shown in schedules

presented herewith, the Manufacturer will at once credit the Agent with an amount equal to the difference between the compensation he has been receiving and the compensation he then becomes entitled to.

“6. The Agent shall render to the Manufacturer, not later than the tenth of every month, a report, on forms provided by the Manufacturer, covering his sales of the Manufacturer’s lamps during the preceding calendar month.

“The Agent shall pay over to the Manufacturer, not later than the tenth of every month, an amount equal to the total sales of all lamps sold hereunder, less the compensation due the Agent for which collections have been made by the Agent during the preceding calendar month, and a further amount equal to the total sales value less the compensation due the Agent, on all lamps sold by the Agent to customers whose accounts covering such lamps are, on the first of the month, past due, according to the Manufacturer’s standard terms of payment.

“If reports are forwarded as provided in this clause, and are accompanied by a remittance covering in full the lamps sold by the Agent during the preceding calendar month, whether or not such accounts have been collected, such remittance may be the total sales of the lamps sold, less the compensation due the Agent, and less 5 per cent of the amount arrived at, which 5 per cent shall be allowed as an additional compensation for such payment and service.

“7. The Agent shall, on or before the 15th day

of January and July, make and forward to the Manufacturer, on [9] forms provided by the Manufacturer, a complete itemized report or inventory of all of the Manufacturer's lamps on hand at the close of business on the last day of the preceding calendar month and shall render a similar report within 15 days after the termination or expiration of this appointment with reference to all such lamps on hand at the date of such expiration or termination. At the time for rendering each such report, the Agent shall pay to the Manufacturer the value of all lamps lost from the aforesaid stock or damaged, on the basis of list prices less a discount of 29 per cent.

"8. The Agency hereby created may be terminated by notice in writing to the Agent in the event that the Agent shall be or become insolvent or in the event of a breach by the Agent of any of the terms or conditions of this appointment. The expiration or termination of this Agency for any reason shall be without prejudice to the rights of the Manufacturer against the Agent, and immediately upon any such expiration or termination the Agent shall deliver to the Manufacturer all lamps consigned hereunder and that remain unsold and shall fully perform all obligations of the Agent that then remain unfulfilled.

"This appointment is hereby signed for the General Electric Company, the Manufacturer, by the General Manager of its Banner Electric Works or his duly authorized representative located in the



sales office of its said works at Youngstown, Ohio.

“L. N. NORRIS,

“General Manager Banner Electric Works.

“Accepted:

“ANDRUS-CUSHING LIGHTING FIX-  
TURE COMPANY.

“Agent.”

(Verification.)

Filed this 15 day of Oct., 1913, 10 A. M. R. F. Laffoon, Referee in Bankruptcy. [10]

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**Order (of Referee) Confirming Sale.**

This cause coming on regularly to be heard on the 15th day of October, 1913, at the hour of 10 o'clock A. M. of said day, pursuant to the due and regular adjournment of the creditors' meeting held on the 11th day of October, 1913, upon the report of the trustee, of the sale of personal property of the bankrupt herein, and it appearing to the Court that due notice was given of the time and place of said sale as required by the laws of the United States and the order of this Court, and that said sale was conducted regularly in all respects, and that at said sale J. G. Parkhurst was the highest and best bidder for the personal property of said bankrupt and bid therefor the sum of \$3,600 in cash, the said property including all the property of said bankrupt, except the book accounts and the personal property claimed by the Banner Electric Company as consigned goods, and

IT FURTHER APPEARING TO THE COURT, that the said J. G. Parkhurst bid for the

said property, claimed by the said Banner Electric Company as consigned goods, the sum of \$210.00, and that said bid was the highest and best bid therefor, and

This cause coming on further to be heard on said 15th day of October, 1913, upon the petition of the said Banner Electric Company, praying that the said consigned goods be by order of this Court, turned over to the possession of said Banner Electric Company, as the property of said Banner Electric Company, the Court having heard the evidence presented in support of said petition and having heard the argument of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED, that petition of the said Banner Electric Company aforesaid be and the same is hereby denied and [11] overruled, to which order the said Banner Electric Company by its counsel duly excepted and its exception is allowed.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, that the sale of all the personal property of said bankrupt corporation with the exception of the book accounts and the consigned goods aforesaid to J. G. Parkhurst for the sum of \$3,600.00 be and the same is hereby ratified, approved and confirmed and the trustee in bankruptcy herein, is hereby directed to forthwith deliver possession of said *personal* to the said John G. Parkhurst upon receiving from him the sum of \$3,600.00 in cash.

IT IS FURTHER HEREBY ORDERED THAT THE SALE OF THE CONSIGNED GOODS claimed by the Banner Electric Company to J. G. Parkhurst for the sum of \$210.00 be and the same is hereby ratified, approved and confirmed, but

the said trustee in bankruptcy is hereby directed to retain possession of said goods claimed by the said Banner Electric Company for the period of five days from and after the 15th day of October, 1913, which time is hereby allowed the said Banner Electric Company to file a petition for review before the district judge of said District.

Done in open court this 15th day of October, 1913.

R. F. LAFFOON,  
Referee in Bankruptcy.

[Endorsed]: "Filed this 17 day of October, 1913, at 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy." [12]

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**Petition for Review of Referee's Order.**

To the Honorable R. F. LAFFOON, Referee in Bankruptcy:

Comes now the Banner Electric Works of the General Electric Company and respectfully shows:

I.

That heretofore prior to the sale of the stock belonging to the said bankrupt, your petitioner filed a petition with the Referee asking for the return and the possession of about six hundred nineteen and 73/100 (\$619.73) dollars worth of lamp stock belonging to your petitioner, which said stock was held by the bankrupt as agent, a copy of the contract of agency which is marked Trustee's Exhibit No. 1.

II.

That thereafter said stock was sold by the trustee subject to the confirmation thereof for the sum of two hundred ten (\$210.00) dollars.

## III.

That your petitioner objected to the confirmation thereof and reference is hereby made to the said petition.

## IV.

That said sale of the trustee was confirmed by the Referee on the 15th day of October, 1913.

## V.

That the Referee in Bankruptcy erred in the following manner:

1. In permitting a sale of the stock without an appraisalment.

2. In construing the contract of appointment of agent, Exhibit No. 1, as a conditional sale instead of a [13] bailment, and thereby confirming the sale and in ruling that such a contract, in order to protect the Manufacturer, must be recorded with the Auditor within ten days after such appointment.

3. In refusing an order allowing your petitioner the immediate possession of said Banner Electric stock.

WHEREFORE, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated this 15th day of October, 1913.

BANNER ELECTRIC WORKS OF THE  
BANNER ELECTRIC COMPANY,

Petitioner.

By RALPH WOODS,  
Attorney for Petitioner.

“Filed this 15 of Oct., 1913, 2 P. M. R. F. Laffoon, Referee in Bankruptcy.” [14]

**Certificate of Referee on Petition for Review.**

To the Honorable EDWARD E. CUSHMAN, U. S. District Judge.

I, R. F. Laffoon, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 17th day of October, A. D. 1913.

That, on the 15th day of October, 1913, the Banner Electric Works, a claimant in this cause, feeling aggrieved thereat, upon the ruling of the referee and in anticipation of the order, filed its petition for review of the aforesaid order herein, which was granted.

That a summary of the evidence on which such order was based is as follows: The claimant, the Banner Electric Works, by its petition claimed the return of certain lamp stock in the possession of the trustee of the value of \$619.73, to which petition the trustee filed objections and exceptions, to wit:

I.

That the transaction between the Banner Electric Company and the bankrupt was a sale of the said stock to the bankrupt corporation.

II.

That the transaction between the Banner Electric Company and the bankrupt is not an absolute sale was a conditional sale and void as to creditors for the reason that the same was not recorded in the manner and form provided by the law of the State of Washington.

## III.

That the title of the said goods under the law and the facts in this case is in the trustee in bankruptcy for the [15] benefit of all the creditors of the bankrupt.

## IV.

That the Banner Electric Company has treated said transaction as a sale and has filed a general claim setting forth that it is a creditor to the extent of the purchase price of said goods, and that the said petitioner is now estopped from claiming that the title of the said property did not pass to the said trustee.

Upon the hearing of the petition on motion of counsel for the petitioner, the Banner Electric Company, was allowed to amend its proof of claim filed herein, in such manner as to exclude any of the lamp stock claimed in its petition, if its proof in fact included any of that stock, and so disposed of the trustee's fourth exception herein, and the hearing was had upon the trustee's exceptions 1, 2 and 3.

Upon the examination of Mr. Andrus, president of the bankrupt company, at page 6 of the transcript of the testimony it appears that the Banner Electric Company filed its proof of claim herein, claiming \$1,399.00 in full of its account, and that at the same time its agent's monthly report for July 31, 1913, showed the bankrupt indebted to the Banner Electric Company in the sum of \$961.29, not including in that sum the amount of stock on hand, which was something like \$400.00 in value.

Upon the examination Mr. Ackroyd, secretary and treasurer of the bankrupt corporation, testified, at pages 18, 19, 20 and 21, that he was the agent of

petitioner, the Banner Electric Works, independent of his position as a stockholder in, and an officer of the bankrupt company; that as such agent he kept in storage here in Tacoma, lamp stock of the said Banner Electric Company and delivered from such warehouse stock to the bankrupt to be sold at retail; upon which he received a commission [16] of 5%; that his position as such general agent was well understood by both the bankrupt corporation and the petitioner herein. Mr. Ackroyd also testified on page 23, that the stock on hand was not included in the proof of claim as filed by the claimant herein, Mr. Ackroyd further testified on page 26 of the transcript of testimony, that he held the Banner Electric Company's goods in the warehouse controlled by them. In answer to the following question, "Did you deliver the goods they were short of, or a case of goods?" he answered, "Anything they needed." Of course a lot of these lamps were required on jobs and on retail sales. "Whenever they were needed you let them have them?" Answer, "Yes." "Just as they needed?" "Yes."

The trustee in his first report, filed September 22, 1913, attaches an inventory of the lamp stock on hand in the store September 8, 1913, claimed by the Banner Electric Company at the invoice price of the value of \$619.73.

It is claimed that this lamp stock when in the store of the bankrupt for sale was kept separate and apart from the other goods in the house, and that separate accounts were kept of the sales of these goods as required in the contract between the Banner Electric Works and the bankrupt, which is in evidence as Trustee's Exhibit Number 1, but it does not appear

that there was any greater degree of separation as between the Banner Electric stock and other stock than would naturally be the case with any other special line of goods. The said contract purports to be one of agency and while it provides for the return of any unsold stock at any termination of the contract, whether it terminates by its own terms or from some act of the parties, yet it seems to me that its evident purpose was, to enable the Manufacturer to control the output of his mills and [17] the disposition of his products, and that when his goods are put in the hands of his so-called agents for sale that the sale is absolute so far as creditors are concerned, and that upon the termination of an agency as between the agent and the manufacturer, he could require the return of the unsold goods in accordance with his scheme of protecting and controlling his sales. The effect of this contract is to give the agent 60 days' credit, and ten days' further time in which to report sale of the goods actually disposed of, but there is nothing in the contract to prevent the said agent paying for all of the goods upon their receipt, but at the expiration of the 60 days plus 10 days the payment would constitute a sale of the goods and pass the title from the manufacturer. Section 8 of the said contract provides that the agency may be terminated by notice in writing to the company in event that the agent shall be, or become insolvent.

It appears from the testimony of Mr. Ackroyd, and from the claims for unpaid salary filed by Mr. Ackroyd and the president, that their wages of \$30.00 per week was in arrears and had not been regularly paid them for quite a long period, and with other indebtedness against the bankrupt, which was



well known to Mr. Ackroyd, which knowledge was sufficient to apprise the Banner Electric Company of the inability of the Bankrupt to meet its obligations, but the petitioner took no steps to terminate the contract.

Section 2 of the contract shows that it was the intention of the parties that the agent should have and maintain a 30 to 60 days' supply of stock as estimated by the agent, and under section 6 of the contract it was contemplated that the agent should settle every 30 days, upon the 10th of the month, and [18] pay for all lamps that had been sold and collected for, and also to pay for the lamps that had been sold and had not been paid for for more than a month, which to my mind shows that it was expected in the making of said contract to the agency that the stock furnished the agent would be paid for by the agent within 60 days plus ten days. This contract expires by its terms on the 8th day of July, 1913, and the adjudication in bankruptcy was had on the 14th day of August, 1913, no change having been made in the conduct of the business within that period.

It is my opinion that all of the lamp stock put into the store by the agent, Mr. Ackroyd, from the Banner Electric Company's warehouse was sold to the bankrupt, and there was no expectation or intention on the part of the said agent that any of it would be taken back by the Banner Electric Company. I think this case is similar to the case, *In re Graves & Labelle*, number 5030, decided by the Honorable Edward E. Cushman about June 27, 1913, and therefore sustained the exceptions filed by the trustee, and denied the application of the Banner Electric Company.

That the question presented on this review is: Whether or not the petitioner, the Banner Electric Company, is entitled to the possession of a certain stock of lamps now in the possession of the trustee in bankruptcy herein.

I hand up herewith for the information of the judge the following papers:

1. Petition for Review.
  2. Order denying the application and confirming sale.
  3. Petition for the delivery of the goods.
  4. Objections to the confirmation of the sale.
  5. Objections and exceptions of the trustee.
- [19]
6. Trustee's first report.
  7. Minutes of the meeting of October 11, 1913.
  8. Transcript of the testimony taken September 10, 1913.
  9. Transcript of the testimony taken October 15, 1913.
  10. Trustee's Exhibit number 1.
  11. Petitioner's Exhibit "A."
  12. Petitioner's Exhibit "B."

Dated October 18, 1913.

Respectfully submitted,

R. F. LAFFOON,  
Referee in Bankruptcy.

[Endorsed]: Filed this 8th day of Oct., 1913, 11:30  
A. M. R. F. Laffoon, Referee in Bankruptcy."

"Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 18, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [20]

**Order Confirming Referee's Decision.**

This matter coming on on review of the Referee's decision, it is now ordered that the Referee's decision be, and the same is hereby affirmed.

(January 12, 1914.) [21]

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**Petition for Appeal.**

Now comes General Electric Company, a corporation, petitioner for the reclamation of certain goods in the hands of the Trustee, as by the records and files of this court more fully appear, and considering itself aggrieved by the order and final decree of this Court made and entered January 12, 1914, confirming the order of the Referee denying said petition made and entered on October 15, 1913, hereby does appeal from said order and final decree, and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in its Assignments of Error which is filed herewith.

Your petitioner presents herewith its said Assignments of Error and its Bond on Appeal in the penal sum of two hundred fifty (\$250.00) dollars with the Fidelity and Deposit Company of Maryland, a corporation authorized to act as surety within this District, and prays that said sum be fixed as the amount of its said bond on appeal, and that its said bond as executed be approved, and further prays that this, its said appeal, may be allowed and that transcript of the record, proceedings and papers upon which said order and final decree were made, duly authenticated, may be sent to the United States Circuit

Court of Appeals for the Ninth Circuit, and that citation may issue to C. A. Brower, the Trustee in Bankruptcy of the estate of the said Bankrupt, to be and appear in said Circuit Court of Appeals on a day certain, as by law provided.

FRANK H. KELLEY,  
RALPH WOODS,

Attorneys for General Electric Company, Petitioner as aforesaid. Suite 717-18-19, Tacoma Bldg., Tacoma, Wash. [22]

DOLPH, MALLORY, SIMON & GEARIN,  
Of Counsel.

Service of the within and foregoing petition, by the receipt of copy thereof, hereby is acknowledged this 4th day of May, 1914.

WALTER M. HARVEY,

Attorneys for C. A. Brower, Trustee in Bankruptcy of the Estate of Andrus-Cushing Lighting Fixture Co., a Corporation, Bankrupt.

“Filed in the U. S. District Court, Western District of Washington, Southern Division. May 6, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [23]

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### **Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS: That we, General Electric Company of New York, as principal, and Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto C. A. Brower, as Trustee in Bankruptcy of the estate of Andrus-Cushing Lighting Fixture Company, a corporation, bankrupt, in the penal sum of two hundred fifty (\$250.00) dollars, well and truly to be

paid to the said C. A. Brower, Trustee, or to his successors in said trust, for the payment of which well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed and dated at Tacoma this 4th day of May, 1914.

The condition of this obligation is such that

WHEREAS, the above-bounden General Electric Company has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the order and final decree of the said District Court of the United States for the Western District of Washington, denying the said General Electric Company's petition for the reclamation of certain goods, which final order and decree was made and entered as of record as of January 12, 1914, in the records and files of said court.

NOW, THEREFORE, if the said General Electric Company shall prosecute its said appeal to effect and answer all costs and damages that may be awarded against it on said appeal, if it fail to make its said appeal good, then this obligation is to be void, otherwise to be and remain in full force and virtue. [24]

IN WITNESS WHEREOF, the above-bounden principal has caused its name to be hereto affixed, by Frank H. Kelley, Esq., its attorney, so to do duly authorized, and the above-bounden surety has caused its name and corporate seal hereto to be affixed by H. T. Hansen, its attorney in fact, so to do duly au-

thorized, at Tacoma the day and year above written.

GENERAL ELECTRIC COMPANY OF  
NEW YORK, a Corporation.

By FRANK H. KELLEY,

Its Attorney.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND.

By H. T. HANSEN, (Seal)

Its Attorney in Fact.

Approved:

EDWARD E. CUSHMAN,

Dist. Judge.

“Filed in the U. S. District Court, Western District of Washington. Southern Division. May 6, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [25]

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### **Assignments of Error.**

Now comes General Electric Company of New York, a corporation, petitioner for the reclamation of certain goods in the hands of the Trustee of the above-entitled bankrupt estate, and petitioner on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order and final decree of the above-entitled District Court denying its said petition for reclamation, and herewith makes upon its said petition the following Assignments of Error, to wit:

#### I.

The said District Court erred in finding under the evidence and the stipulated facts that the title of said goods sought to be reclaimed was in the Trustee of

said bankrupt estate and not in the petitioner for reclamation.

## II.

The said District Court erred in finding under the evidence and the stipulated facts that the transaction therein set forth between said bankrupt corporation and said petitioner for reclamation constituted a sale of the said goods by the petitioner to the said bankrupt.

## III.

That said District Court erred in ~~not~~ finding under the evidence and the stipulated facts that the transactions therein set forth between the petitioner and the said bankrupt corporation constituted if not an actual, a conditional sale of said goods by the said petitioner for reclamation with the said bankrupt, and as such conditional sale said transaction was required by the laws of the State of Washington to be recorded as of a [26] public record to be effective as against creditors of the said bankrupt corporation or their representative.

## IV.

The said District Court erred in failing to find from the evidence and the stipulated facts that the transactions between the said petitioner for reclamation and the said bankrupt corporation constituted an agency for the sale of said goods, and the property of said petitioner for reclamation by the said bankrupt corporation as an agent, and that the title of said goods remaining unsold was in the petitioner for reclamation.

## V.

The said District Court erred in failing to find under the evidence and the stipulated facts that the

title to said goods was in the petitioner for reclamation and that the said petitioner for reclamation had a present right to said goods.

## VI.

The said District Court erred under the evidence and the stipulated facts in denying the petition for reclamation of the petition, and in affirming the order theretofore made of the Referee in Bankruptcy denying said Petition.

WHEREFORE, the said petitioner for reclamation prays that said order and final decree of the said District Court be reversed and that the said District Court may, by mandate, be directed to enter a final order and decree allowing the petition of the said petitioner for reclamation. [27]

FRANK H. KELLEY,  
RALPH WOODS,

Attorneys for General Electric Company, Suite 717-  
18-19, Tacoma Bldg., Tacoma, Washington.  
DOLPH, MALLORY, SIMON & GEARIN,  
Of Counsel.

Service of the within and foregoing Assignments of Error, by the receipt of a copy thereof, hereby is acknowledged this 4th day of May, 1914.

WALTER M. HARVEY,

Attorneys for A. C. Brower, Trustee in Bankruptcy  
of the Estate of Andrus-Cushing Lighting Fix-  
ture Company, a Corporation, Bankrupt.

“Filed in the U. S. District Court, Western Dis-  
trict of Washington, Southern Division. May 6,  
1914. Frank L. Crosby, Clerk. By F. M. Harsh-  
berger, Deputy.” [28]



**Order Granting Appeal and Fixing the Amount of  
Bond on Appeal.**

The petitioner, General Electric Company, having heretofore filed its petition for appeal and therewith assignments of error together with its bond in the penal sum of two hundred fifty (\$250.00) dollars, conditioned as by law required, and with Fidelity and Deposit Company of Maryland as surety; having further given due notice to the Trustee of the above-named bankrupt of its said petition and its said bond and of the time of presenting same,

IT IS ORDERED that the said appeal be and the same hereby is allowed to the said petitioner, and the amount of its bond on appeal hereby is fixed as of the sum of two hundred fifty (\$250.00) dollars, and the petitioner's said bond on appeal in said penal sum, with the surety aforesaid, hereby is approved; and

IT FURTHER IS ORDERED that citation issue to the said C. A. Brower, as Trustee of the said Bankrupt estate, as by law provided.

Done in open court at Seattle this 5th day of May, 1914.

Exception allowed respondent.

EDWARD E. CUSHMAN,

Judge of the District Court of the United States for  
the Western District of Washington, Holding  
Terms at Tacoma.

“Filed in the U. S. District Court, Western District of Washington, May 6, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [29]

*In the District Court of the United States for the  
Western District of Washington, Holding  
Terms at Tacoma.*

No. —

IN RE ANDRUS-CUSHING LIGHTING FIX-  
TURE CO., a Corporation,

Bankrupt.

GENERAL ELECTRIC COMPANY, a Corpora-  
tion,

Claimant and Appellant,

vs.

C. A. BROWER, Trustee of the Estate of  
ANDRUS-CUSHING LIGHTING FIX-  
TURE COMPANY, a Corporation, Bank-  
rupt,

Respondent and Appellee.

**Amended Stipulation for Record Under Rule 77.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the parties to the above-  
entitled suit, that the following Amended Statement  
of the Case shall supersede for the purposes of the  
appeal all parts of the record and shall be considered  
by the Appellate Court in lieu of record on appeal,  
as provided by Rule 75 of the Rules of Practice of  
Courts of Equity of the United States, and shall be  
and constitute the Statement on Appeal as provided  
by Rule 77 of said Rules and Practices:

I.

That on the 8th day of July, 1912, the General  
Electric Company and the Andrus-Cushing Light-  
ing Fixture Company entered into a contract known  
as "Form A," in words and figures as follows, to wit:

## “APPOINTMENT OF AGENT.

## “INCANDESCENT LAMPS.

“The General Electric Company, a New York corporation (hereinafter called the ‘Manufacturer’), hereby, through the General Manager of its Banner Electric Works, at Youngstown, Ohio, appoints Andrus-Cushing Ltg. Fixt. Co. of Tacoma, Wash., (hereinafter called the ‘Agent’), an Agent to sell for it its Banner Incandescent Lamps manufactured under United States Letters Patent, of the types and classes hereinafter specified, upon the terms and subject to the conditions herein set forth, and said Agent hereby accepts the appointment, and agrees to comply with said terms and to perform all conditions hereof.

1. The Agency hereby created shall continue for the period of one year from July 8th, 1912, unless sooner terminated as herein provided. [30]

2. The Manufacturer agrees to maintain in the custody of the Agent, to be disposed of as herein provided, a stock of its Banner Gem (metalized filament), Mazda (Tungston) and Tantalum patented incandescent lamps; all of the lamps in such consigned stock shall be and remain the property of the Manufacturer until the lamps are sold, and the proceeds of all lamps sold shall be held for the benefit and for the account of the Manufacturer until fully accounted for as hereinafter provided. The quantity of lamps and the length of time they shall remain in stock is to be at all times determined by the Manufacturer; but its intent is to maintain the stock on an average basis of from 30 to 60 days’ supply, as estimated by the Agent. All lamps shipped hereunder by or on behalf of the Manufacturer either to the Agent or upon his request during the continu-

ance of this Agency, shall be subject to the same terms, conditions and agreements as if shipped to said stock, whether or not so specified. The Agent shall return to the Manufacturer, at any time when directed by it, all or any part of the said lamps that have not been sold, and any duly authorized representative of the Manufacturer shall have access at all times during business hours to the place or places in which said lamps are stored.

3. The agent is hereby authorized (a) to sell to anyone, lamps from said stock in broken package quantities at broken package prices, and in standard package quantities at standard package prices, and (b) to sell lamps from said stock to any purchaser under standard forms of contract made by the Manufacturer and under which the Agent may be given, by the Manufacturer, written authority to deliver lamps at the prices fixed in said contracts, and (c) to sell, at prices on the same basis as those in standard forms of contract, lamps from said stock to any purchaser, not under contract, for the purchaser's immediate use; but sales under this subdivision (c) may be made only on written permission from the Manufacturer first obtained in each instance. All sales shall be made only at such prices and upon such terms as may be established by the Manufacturer; the present prices and terms being contained in the schedules presented herewith, which are subject to change on written notice from the Manufacturer from time to time.

Upon all bills and invoices for lamps sold by the Agent shall appear the words: 'Agent for Banner Incandescent Lamps of General Electric Company.' The Agent has no authority to sell or transfer or in any way dispose of such lamps, except as herein ex-

pressly provided, and shall not control, or attempt to control, the prices at which any purchaser shall sell any of such lamps. The due payment to the Manufacturer for all sales made hereunder by the Agent shall be and hereby is guaranteed by said Agent.

The Agent shall conform to the educational and engineering instructions of the Manufacturer, and shall advise with and instruct prospective purchasers as to the classes and types of lamps best suited to their several requirements in order to secure a maximum illumination for a minimum expenditure, and shall conduct the business hereunder to the satisfaction of the Manufacturer.

4. All of the Agent's books and records relating to his transactions in connection with the sale and distribution of the Manufacturer's lamps shall at all times during business hours be open to the inspection of any duly authorized representative of the Manufacturer.

5. The Agent shall pay all expenses in the storage, cartage, transportation, handling and sale of lamps hereunder, and all expense incident thereto and to the accounting and collection [31] of accounts thus created. The Agent shall be allowed as compensation for the performance of all obligations hereunder, the difference between the amounts received from the sale of the lamps and their value on the basis of a discount of 29 per cent from list prices as to the time fixed by the Manufacturer. The Manufacturer agrees that if the Agent sells, during the period of this appointment, a quantity of lamps the value of which would entitle him to a higher basis of compensation, as shown in Schedules pre-

sented herewith, the Manufacturer will at once credit the Agent with an amount equal to the difference between the compensation he has been receiving and the compensation he then becomes entitled to.

6. The Agent shall render to the Manufacturer, not later than the tenth of every month, a report, on forms provided by the Manufacturer, covering his sales of the Manufacturer's lamps during the preceding calendar month.

The Agent shall pay over to the Manufacturer, not later than the tenth of every month, an amount equal to the total sales value of all lamps sold hereunder, less the compensation due the Agent, for which collections have been made by the Agent during the preceding calendar month, and a further amount equal to the total sales value less the compensation due the Agent, on all lamps sold by the Agent to customers whose accounts covering such lamps are, on the first of the month, past due, according to the Manufacturer's standard terms of payment.

If reports are forwarded as provided in this clause, and are accompanied by a remittance covering in full the lamps sold by the Agent during the preceding calendar month, whether or not such accounts have been collected, such remittance may be the total sales value of the lamps sold, less the compensation due the Agent, and less 5 per cent of the amount so arrived at, which 5 per cent shall be allowed as an additional compensation for such payment and service.

7. The Agent shall, on or before the 15th day of January and July, make and forward to the Manufacturer, on forms provided by the Manufacturer, a complete itemized report or inventory of all of the

Manufacturers' lamps on hand at the close of business on the last day of the preceding calendar month, and shall render a similar report within 15 days after the termination or expiration of this appointment with reference to all such lamps on hand at the date of such expiration or termination. At the time for rendering each such report, the Agent shall pay to the Manufacturer the value of all lamps lost from the aforesaid stock or damaged, on the basis of list prices, less a discount of 29 per cent.

8. The Agency hereby created may be terminated by notice in writing to the Agent in the event that the Agent shall be or become insolvent or in the event of a breach by the Agent of any of the terms or conditions of this appointment. The expiration or termination of this Agency for any reason shall be without prejudice to the rights of the Manufacturer against the Agent, and immediately upon any such expiration or termination the Agent shall deliver to the Manufacturer all lamps consigned hereunder and that remain unsold and shall fully perform all obligations of the Agent that then remain unfulfilled.

This appointment is hereby signed for the General Electric Company, the Manufacturer, by the General Manager of its Banner Electric Works or his duly authorized representative located in the sales office of its said works at Youngstown, [32] Ohio.

(Signed) N. L. NORRIS,

General Manager Banner Electric Works.

Accepted:

(Signed) ANDRUS-CUSHING LTG. FIX-  
TURE CO.

F. L. CUSHING, Tr.,  
Agent."

That in pursuance of said contract and in accordance with its terms, the lamps in controversy in this proceeding were delivered by the General Electric Company through its Banner Electric Works to the Andrus-Cushing Lighting Fixture Company and that the value of said lamps is \$600.00.

## II.

That the said contract was not recorded in the Auditor's office of Pierce County, Washington.

## III.

That the said lamps were not kept separate and apart from other stock of the bankrupt company, except that they were kept together on shelves in one place for sale, and in boxes marked "Banner Electric Company."

## IV.

The bankrupt company paid all expenses in storage taxes, insurance, cartage, transportation, handling and sale of all lamps delivered to it in accordance with the contract above set out:

## V.

Prior to the execution of the contract aforesaid, one Ackroyd was a general agent of the Banner Electric Works of the General Electric Company in Tacoma and vicinity. After the execution of said contract, the said Ackroyd became a stockholder and officer of bankrupt corporation, with the knowledge and consent of the Banner Electric Works of the General Electric [33] Company, but on the condition that the bankrupt company should have no interest in Ackroyd's agency or the emoluments thereof, which condition was observed by all the parties. During the existence of the said contract between the Banner Electric Works of the General



Electric Company and the bankrupt, Ackroyd was the Secretary and Treasurer of and a stockholder in said bankrupt corporation, and was at the same time the agent and representative in Tacoma of the Banner Electric Works of the General Electric Company; this double relation was known to and acquiesced in by both the Banner Electric Works of the General Electric Company and the bankrupt corporation.

As Agent of the Banner Electric Works of the General Electric Company, Ackroyd had a depot or warehouse in which were stored and kept in the City of Tacoma the lamps of the Banner Electric Works of the General Electric Company, and from this depot or warehouse he supplied the lamps of the General Electric Company to purchasers and agents, and upon request they were supplied to the Andrus-Cushing Lighting Fixture Company, the bankrupt corporation. When he delivered from such warehouse a stock of lamps to the bankrupt corporation, which they sold at retail, he received a commission of five per cent. Any goods which the bankrupt corporation were short of at any time were supplied by Ackroyd as agent of the Banner Electric Works of the General Electric Company from this warehouse and he furnished to the bankrupt corporation anything which they needed on their various jobs or on retail sales.

Ackroyd, while acting as such agent for the Banner Electric Works of the General Electric Company, knew by reason of his position as Secretary and Treasurer and a stockholder in the bankrupt corporation, that the wages and salary of \$30.00 [34] per week of Mr. Andrus as President and of

himself as Secretary and Treasurer were in arrears and had not been regularly paid them for quite a long period, and also of other unpaid indebtedness of the bankrupt corporation which it had not and could not pay in the regular course of business, and the said bankrupt corporation was unable to meet its various obligations and was insolvent, and although the said Banner Electric Works of the General Electric Company, through its said Agent, Ackroyd, knew of these facts, it took no steps or proceedings to terminate the contract between the General Electric Company and the bankrupt corporation.

The contract in controversy expired by its terms on the 8th of July, 1913, and the petition in bankruptcy and the adjudication in bankruptcy were both filed and entered on the 14th day of August, 1913, and no change had been made in the manner of conducting the business of the bankrupt corporation or in the relations between the Banner Electric Works of the General Electric Company and the bankrupt during that period.

Thereafter, on October 8th, 1913, a petition to reclaim said goods was duly filed, as follows:

“Comes now the Banner Electric Works of the General Electric Company, a corporation, by Ralph Woods, its attorney, and respectfully shows to the Court.

### I.

That at the time of the filing of the petition in bankruptcy in the above-entitled proceedings, your petitioner was the owner of lamp stock of the value of six hundred and nineteen and 73/100 (\$619.73) dollars, which said lamp stock is in the possession of

the trustee in bankruptcy and which stock has at all times been kept separate and segregated from the stock of the said bankrupt.

II.

For a complete list of the stock of your petitioner reference is hereby made to the first report of the trustee, on page seven.

WHEREFORE, your petitioner prays that said lamp stock be withheld from sale and upon a hearing the same be forthwith delivered to your petitioner.

BANNER ELECTRIC WORKS,

By RALPH WOODS,

Its Attorney. [35]

[Endorsed]: Filed this 8 day of October, 1913, at 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy."

And objections to the confirmation of a sale of said goods by the trustee were filed on October 15, 1913, as follows:

"Comes now the Banner Electric Works of the General Electric Company, by Ralph Woods and Frank H. Kelley, its attorneys, and objects to the confirmation of the sale of what is known as the Banner Electric stock, and shows to the Court as follows:

I.

That your petitioner has filed herewith claim for what is known as the Banner Electric stock; that notice was given to purchaser at the time of the sale; that no action was taken by the Court at said time.

II.

That no appraisalment was made of said goods and the property was sold without proper notice; that at the time of said sale the referee states that the same

would be sold subject to confirmation.

### III.

Your petitioner further shows that said goods belonging to your petitioner were held by the bankrupt merely as agent for your petitioner; that what is known as the Banner Electric stock was at all times segregated and kept separate from the main stock of the said bankrupt.

### IV.

That your petitioner at all times while said stock was in the store of the said bankrupt was insured against fire and against burglars and said insurance was paid by your petitioner.

### V.

That the taxes on the same were paid by your petitioner.

### VI.

That the first report of the trustee shows that the stock of your petitioner was kept separate and segregated from the main stock, and your petitioner hereby refers to the first report of the trustee for correct list of said stock.

### VII.

That the following is a copy of the contract entered into by your petitioner and the said bankrupt, to wit:

(Herein follows the contract as hereinbefore set forth.)”

Thereafter Appellant's petition to reclaim was denied and its objections to the Trustee's sale were overruled, as follows:

“This cause coming on regularly to be heard on the 15th day of October, 1913, at the hour of 10 o'clock

A. M. of said day pursuant to the due and regular adjournment of the creditor's meeting held on the 11th day of October, 1913, upon the report of the trustee, of the sale of personal property of the bankrupt herein, and it appearing to the Court that due notice was given of the time and place of said sale as required by the laws of the United States and the order of this Court, and that said sale was conducted regularly in all respects, and [36] that at said sale J. G. Parkhurst was the highest and best bidder for the personal property of said bankrupt and bid therefor the sum of \$3,600 in cash, the said property including all of the property of said bankrupt, except the book accounts and the personal property claimed by the Banner Electric Company as consigned goods, and

It further appearing to the Court, that the said J. G. Parkhurst bid for the said property claimed by the Banner Electric Company as consigned goods, the sum of \$210.00, and that said bid was the highest and best bid therefor, and

This cause coming on further to be heard on said 15th day of October, 1913, upon the petition of the said Banner Electric Company, praying that the said consigned goods be by order of this Court, turned over to the possession of said Banner Electric Company as the property of said Banner Electric Company, the Court having heard the evidence presented in support of said petition and having heard the argument of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED, that said petition

of the said Banner Electric Company aforesaid be and the same is hereby denied and overruled, to which order the said Banner Electric Company by its counsel duly excepted and its exception is allowed.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, that the sale of all the personal property of said bankrupt corporation with the exception of the book accounts and the consigned goods aforesaid to J. G. Parkhurst for the sum of \$3,600.00 be and the same is hereby ratified, approved and confirmed and the trustee in bankruptcy herein, is hereby directed to forthwith deliver possession of said *personal* to the said John G. Parkhurst upon receiving from him the sum of \$3,600.00 in cash.

IT IS FURTHER HEREBY ORDERED that the sale of the consigned goods claimed by the Banner Electric Company to J. G. Parkhurst for the sum of \$210.00 be and the same is hereby ratified, approved and confirmed, but the said trustee in bankruptcy is hereby directed to retain possession of said goods claimed by the said Banner Electric Company for the period of five days from and after the 15th day of October, 1913, which time is hereby allowed the said Banner Electric Company to file a petition for review before the District Judge of said District.

Done in open court this 15th day of October, 1913.

R. F. LAFFOON,

Referee in Bankruptcy.”

Thereafter appellant on October 15th, 1913, filed its petition for review of the Referee's order aforesaid, as follows:

“To the Honorable R. F. LAFFOON, Referee in  
Bankruptcy:

Comes now the Banner Electric Works of the  
General Electric Company and respectfully shows:

I.

That heretofore prior to the sale of the stock be-  
longing to the said bankrupt, your petitioner filed  
a petition with the Referee asking for the return and  
the possession of about six hundred nineteen and  
73/100 (\$619.73) dollars worth of lamp stock belong-  
ing to your petitioner, which said stock was held  
by the bankrupt as agent, a copy of the contract of  
agency which is marked Trustee's Exhibit No. 1.  
[37]

II.

That thereafter said stock was sold by the Trustee  
subject to the confirmation thereof for the sum of  
two hundred ten (210.00) dollars.

III.

That your petitioner objected to the confirmation  
thereof and reference is hereby made to the said peti-  
tion.

IV.

That said sale of the Trustee was confirmed by the  
Referee on the 15th day of October, 1913.

V.

That the Referee in Bankruptcy erred in the fol-  
lowing manner:

1. In permitting a sale of the stock without an ap-  
praisement.

2. In construing the contract of appointment of  
agent, Exhibit No. 1, as a conditional sale instead of

a bailment, and thereby confirming the sale and in ruling that such a contract, in order to protect the manufacturer, must be recorded with the auditor within ten days after such appointment.

3. In refusing an order allowing your petitioner the immediate possession of said Banner Electric stock.

WHEREFORE, your petitioner, feeling aggrieved because of such orders, prays that the same may be reviewed as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated this 15th day of October, 1913.

BANNER ELECTRIC WORKS OF THE  
GENERAL ELECTRIC COMPANY,

Petitioner,

By RALPH WOODS,  
Attorney for Petitioner."

—and on October 18th, 1913, the Referee's certificate thereon was filed, as follows:

"To the Honorable EDWARD E. CUSHMAN, U. S.  
District Judge:

I, R. F. Laffoon, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 17th day of October, A. D. 1913.

That, on the 15th day of October, 1913, the Banner Electric Works, a claimant in this cause, feeling aggrieved thereat, filed its petition for review of the aforesaid order herein, which was granted.

That a summary of the evidence on which such



order was based is as follows: The claimant, the Banner Electric Works, by its petition claimed the return of certain lamp stock in the possession of the trustee of the value of \$619.73, to which petition the trustee filed objections and exceptions, to wit:

I.

That the transaction between the Banner Electric Company and the bankrupt was a sale of the said stock to the bankrupt corporation.

II.

That the transaction between the Banner Electric Company and the bankrupt is not an absolute sale was a conditional sale and void as to creditors for the reason that the same was not recorded in the manner and form provided by the law of the State of Washington. [38]

III.

That the title of the said goods under the law and the facts in this case is in the Trustee in Bankruptcy for the benefit of all the creditors of the bankrupt.

IV.

That the Banner Electric Company has treated said transaction as a sale and has filed a general claim setting forth that it is a creditor to the extent of the purchase price of said goods, and that the said petitioner is now estopped from claiming that the title of the said property did not pass to the said Trustee.

Upon the hearing of the petition on motion of counsel for the petitioner, the Banner Electric Company, was allowed to amend its proof of claim filed herein, in such manner as to exclude any of the lamp stock claimed in its petition, if its proof in fact in-

cluded any of that stock, and so disposed of the Trustee's fourth exception herein, and the hearing was had upon the Trustee's Exceptions 1, 2 and 3.

Upon the examination of Mr. Andrus, president of the bankrupt company, at page 6 of the transcript of the testimony, it appears that the Banner Electric Company filed its proof of claim herein, claiming \$1,399.00 in full of its account, and that at the same time its agent's monthly report for July 31, 1913, showed the bankrupt indebted to the Banner Electric Company in the sum of \$961.29, not including in that sum the amount of stock on hand, which was something like \$400.00 in value.

Upon the examination Mr. Ackroyd, secretary and treasurer of the bankrupt corporation, testified, at pages 18, 19, 20 and 21, that he was the agent of the petitioner, the Banner Electric Works, independent of his position as a stockholder in, and an officer of the bankrupt company; that as such agent he kept in storage here in Tacoma, lamp stock of the said Banner Electric Company, and delivered from such warehouse stock to the bankrupt to be sold at retail, upon which he received a commission *a* 5%; that his position as such general agent was well understood by both the bankrupt corporation and the petitioner herein, Mr. Ackroyd also testified on page 23, that the stock on hand was not included in the proof of claim as filed by claimant herein; Mr. Ackroyd further testified, on page 26 of the transcript of testimony, that he held the Banner Electric Company's goods in the warehouse controlled by them. In answer to the following question, 'Did you deliver the goods they were

short of, or a case of goods?' He answered, 'Anything they needed.' Of course, a lot of those lamps were required on jobs and on retail sales. 'Whenever they were needed you let them have them?' Answer, 'Yes.' 'Just as they needed?' 'Yes.'

The Trustee in his first report, filed September 22, 1913, attaches an inventory of the lamp stock on hand in the store September 8, 1913, claimed by the Banner Electric Company at the invoice price of the value of \$619.73.

It is claimed that this lamp stock when in the store of the bankrupt for sale was kept separate and apart from the other goods in the house, and that separate accounts were kept of the sales of these goods as required in the contract between the Banner Electric Works and the bankrupt, which is in evidence as Trustee's Exhibit Number 1, but it does not appear that there was any greater degree of separation as between the Banner Electric stock and other stock than would naturally be the case with any other special line of goods. The said contract purports to be one of agency and while it provides for the return of any unsold [39] stock at any termination of the contract, whether it terminates by its own terms or from some act of the parties, yet it seems to me that its evident purpose was to enable the manufacturer to control the output of his mills and the disposition of his products, and that when his goods are put in the hands of his so-called agents for sale, that the sale is absolute so far as creditors are concerned, and that upon the termination of an agency as between the

agent and the manufacturer, he could require the return of the unsold goods in accordance with his scheme of protecting and controlling his sales. The effect of this contract is to give the agent 60 days' credit, and ten days' further time in which to report sale of the goods actually disposed of, but there is nothing in the contract to prevent the said agent paying for all of the goods upon their receipt, but at the expiration of the 60 days plus 10 days the payment would constitute a sale of the goods and pass the title from the manufacturer. Section 8 of the said contract provides that the agency may be terminated by notice in writing to the company in event that the agent shall be, or become insolvent.

It appears from the testimony of Mr. Ackroyd, and from the claims for unpaid salary filed by Mr. Ackroyd and the president, that their wages of \$30.00 per week was in arrears and had not been regularly paid them for quite a long period, and with other indebtedness against the bankrupt, which was well known to Mr. Ackroyd, which knowledge was sufficient to apprise the Banner Electric Company of the inability of the bankrupt to meet its obligations, but the petitioner took no steps to terminate the contract.

Section 2 of the contract shows that it was the intention of the parties that the agent should have and maintain a 30 to 60 days' supply of stock as estimated by the agent, and under Section 6 of the contract it was contemplated that the agent should settle every 30 days, upon the 10th of the month, and pay for all lamps that had been sold and collected for, and also to pay for the lamps that had been sold and had not

been paid for for more than a month, which, to my mind, shows that it was expected in the making of said contract to the agency that within 60 days plus 10 days. This contract expires by its terms on the 8th day of July, 1913, and the adjudication in bankruptcy was had on the 14th day of August, 1913, no change having been made in the conduct of the business within that period.

It is my opinion that all of the lamp stock put into the store by the Agent, Mr. Ackroyd, from the Banner Electric Company's warehouse was sold to the bankrupt, and there was no expectation or intention on the part of the said agent that any of it would be taken back by the Banner Electric Company. I think this case is similar to the case, *In re Graves & Labelle*, No. 5030, decided by the Honorable Edward E. Cushman about June 27, 1913, and therefore sustained the exceptions filed by the trustee, and denied the application of the Banner Electric Company.

That the question presented on this review is: Whether or not the petitioner, the Banner Electric Company, is entitled to the possession of a certain stock of lamps now in the possession of the Trustee in Bankruptcy herein.

I hand up herewith for the information of the Judge the following papers:

1. Petition for review.
2. Order denying the application and confirming sale.
3. Petition for the delivery of the goods.
4. Objections to the confirmation of the sale. [40]
5. Objections and exceptions of the Trustee.

6. Trustee's first report.
  7. Minutes of the meeting of October 11, 1913.
  8. Transcript of the testimony taken September 10, 1913.
  9. Transcript of the testimony taken October 15, 1913.
  10. Trustee's Exhibit Number 1.
  11. Petitioner's Exhibit 'A.'
  12. Petitioner's Exhibit 'B.'
- Dated October 18, 1913.

Respectfully submitted,

R. F. LAFFOON,  
Referee in Bankruptcy."

Thereafter on January 12, 1914, the decision of the Referee was confirmed by the District Court, as follows:

"This matter coming on on review of the Referee's decision, it is now ORDERED that the Referee's decision be and the same is hereby affirmed.

January 12, 1914."

Nothing herein contained shall be held to preclude the Respondent from calling in question the jurisdiction of the Appellate Court to hear and determine this appeal, either as to the subject matter thereof or as to the method adopted to present said appeal to said Court.

Dated July 14, 1914.

FRANK H. KELLEY,  
RALPH WOODS,

Attorneys for Claimant and Appellant.

WALTER M. HARVEY, and

G. C. NOLTE,

Attorneys for Respondent and Appellee.

Approved July 15, 1914.

EDWARD E. CUSHMAN,  
District Judge.

(Filed July 15, 1914.) [41]

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*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. —.

GENERAL ELECTRIC COMPANY, a Corporation,  
Petitioner,

vs.

C. A. BROWER, Trustee in Bankruptcy of the Es-  
tate of ANDRUS-CUSHING LIGHTING  
FIXTURE COMPANY, a Corporation, Bank-  
rupt,

Respondent.

In the Matter of ANDRUS-CUSHING LIGHT-  
ING FIXTURE COMPANY, a Corporation,  
Bankrupt.

**Citation on Appeal [Copy].**

To C. A. Brower, as Trustee in Bankruptcy of the  
Estate of Andrus-Cushing Lighting Fixture  
Company, a Corporation, Bankrupts, Greeting:

You are hereby cited and admonished to be and  
appear at a session of the United States Circuit  
Court of Appeals for the Ninth Circuit, to be holden  
in the City of San Francisco, in the State of Califor-  
nia, on the 30th day of July, 1914, pursuant to a pe-  
tition on appeal and assignment of error filed in the  
Clerk's office of the District Court of the United

States for the Western District of Washington, holding terms at Tacoma, in the above-entitled matter, in which the General Electric Company, a corporation, is claimant, to show cause, if any there be, why the judgment rendered in such cause, confirming the order of the Referee in Bankruptcy disallowing and expunging the claim of said General Electric Company, as in said petition of appeal mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf.

[42]

WITNESS, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington, this 30th day of June, 1914.

[Seal]

EDWARD E. CUSHMAN,

Judge.

Copy of the foregoing citation received this — day of July, 1914.

\_\_\_\_\_,  
Attorney for C. A. Brower, Trustee. [43]



*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 2375.

GENERAL ELECTRIC COMPANY, a Corporation,  
Petitioner,

vs.

C. A. BROWER, Trustee in Bankruptcy of the Es-  
tate of ANDRUS-CUSHING LIGHTING  
FIXTURE COMPANY, a Corporation, Bank-  
rupt,

Respondent.

In the Matter of ANDRUS-CUSHING LIGHT-  
ING FIXTURE COMPANY, a Corporation,  
Bankrupt.

**Affidavit of Service [of Citation on Appeal].**

State of Washington,  
County of Pierce,—ss.

Geo. A. Anderson, being first duly sworn, on oath deposes and says: That he is, and at all times hereinafter mentioned was, a citizen of the United States, a resident of Tacoma, Pierce County, Washington, over the age of twenty-one years, not a party to nor interested in the above-entitled action and is competent to be a witness therein; that at Tacoma, Pierce County, Washington, on the 6th day of July, 1914, he served the citation on appeal in the above-entitled action by delivering to and leaving with Walter M. Harvey, the attorney for C. A. Brower, trustee in bankruptcy of the estate of Andrus-Cushing Lighting Fixture Company, a corporation, bankrupt, re-

spondent in the above-entitled action, a full, true and correct copy of said citation on appeal.

GEO. A. ANDERSON.

Subscribed and sworn to before me this 6th day of July, 1914.

[Seal] RALPH WOODS,  
Notary Public in and for the State of Washington,  
Residing at Tacoma. [44]

“Filed in the U. S. District Court, Western District of Washington, Southern Division. Jun. 30, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy.” [45]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record.]**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing and attached are true and correct copies of the record and proceedings in the case of Andrus-Cushing Lighting Fixture Company, Bankrupt, No. 1398, as required by the stipulation of counsel filed herein, as the originals thereof appear on file in said court, at the city of Tacoma, in said District.

I hereby certify that the cost of preparing and certifying the foregoing record is the sum of \$33.40, which amount has been paid to me by the attorneys for the appellant herein.

I further certify that I attach hereto the original

Citation with affidavit of service in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of this Court, at Tacoma, in said District, this twenty-second day of July, A. D. 1914.

[Seal]

FRANK L. CROSBY,  
Clerk.

By E. C. Ellington,  
Deputy Clerk. [46]

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*United States Circuit Court of Appeals for the Ninth Circuit.*

No. ———.

GENERAL ELECTRIC COMPANY, a Corporation,  
Petitioner,

vs.

C. A. BROWER, Trustee in Bankruptcy of the Estate of ANDRUS-CUSHING LIGHTING FIXTURE COMPANY, a Corporation, Bankrupt,

Respondent.

In the Matter of ANDRUS-CUSHING LIGHTING FIXTURE COMPANY, a Corporation,  
Bankrupt.

**Citation on Appeal [Original].**

To C. A. Brower, as Trustee in Bankruptcy of the Estate of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt, Greetings:  
You are hereby cited and admonished to be and appear at a session of the United States Circuit

Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, on the 30th day of July, 1914, pursuant to a petition on appeal and assignment of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, holding terms at Tacoma, in the above-entitled matter, in which the General Electric Company, a corporation, is claimant, to show cause, if [47] any there be, why the judgment rendered in said cause, confirming the order of the Referee in Bankruptcy disallowing and expunging the claim of said General Electric Company, as in said petition of appeal mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington, this 30th day of June, 1914.

[Seal]

EDWARD E. CUSHMAN,  
Judge.

Copy of the foregoing citation received this ——— day of July, 1914.

\_\_\_\_\_,  
Attorney for C. A. Brower, Trustee. [48]

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 2375.

GENERAL ELECTRIC COMPANY, a Corporation,  
Petitioner,

vs.

C. A. BROWER, Trustee in Bankruptcy of the Es-  
tate of ANDRUS-CUSHING LIGHTING  
FIXTURE COMPANY, a Corporation, Bank-  
rupt,

Respondent.

In the Matter of ANDRUS-CUSHING LIGHT-  
ING FIXTURE COMPANY, a Corporation,  
Bankrupt.

**Affidavit of Service [Citation on Appeal (Original)].**

State of Washington,  
County of Pierce,—ss.

Geo. A. Anderson, being first duly sworn, on oath deposes and says: That he is, and at all times hereinafter mentioned was, a citizen of the United States, a resident of Tacoma, Pierce County, Washington, over the age of twenty-one years, not a party to nor interested in the above-entitled action and is competent to be a witness therein; that at Tacoma, Pierce County, Washington, on the 6th day of July, 1914, he served the citation on appeal in the above-entitled action by delivering to and leaving with Walter M. Harvey, the attorney for C. A. Brower, trustee in bankruptcy of the estate of Andrus-Cushing Lighting Fixture Company, a corporation, bankrupt, respondent in the above-entitled action, a full, true

and [49] correct copy of said citation on appeal.

GEO. A. ANDERSON.

Subscribed and sworn to before me this 6th day of July, 1914.

[Seal]

RALPH WOODS.

Notary Public in and for the State of Washington,  
Residing at Tacoma. [50]

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. General Electric Company, a Corporation, Petitioner, vs. C. A. Brower, Trustee in Bankruptcy of the Estate of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt, Respondent. In the Matter of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 30, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy. No. 2375. [51]

[Endorsed]: No. 2449. United States Circuit Court of Appeals for the Ninth Circuit. General Electric Company, a Corporation, Appellant, vs. C. A. Brower, as Trustee of the Estate of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Received and filed July 24, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.